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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MATTHEW A. LAWRIE,   )
)
              Petitioner(s),   )   No. C 10-2871 CRB (PR)
)
       vs.   )   ORDER OF DISMISSAL
)
WARDEN HEDGPETH, et al.,   )   (Docket # 2)
)
              Respondent(s).   )
)

       Petitioner, a prisoner at Salinas Valley State Prison, has filed a pro se

petition for a writ of habeas corpus alleging inadequate medical care. He also

seeks leave to proceed in forma pauperis under 28 U.S.C. § 1915.

       Based solely on his affidavit of poverty, petitioner's request to proceed in

forma pauperis (docket # 2) is GRANTED. But the petition for a writ of habeas

corpus is DISMISSED without prejudice to filing a civil rights complaint under

42 U.S.C. § 1983.

       Although the Supreme Court has not addressed whether a challenge to a

condition of confinement may be brought under habeas, see Bell v. Wolfish, 441

U.S. 520, 526 n.6 (1979), the Ninth Circuit has held that habeas jurisdiction is

absent, and a § 1983 action proper, where, as here, a successful challenge to a

prison condition will not necessarily shorten the prisoner's sentence. Ramirez v.

1   Galaza, 334 F.3d 850, 859 (9th Cir. 2003). In addition, the preferred practice in

2   the Ninth Circuit has been that challenges to conditions of confinement be

3   brought in a civil rights complaint. See Badea v. Cox, 931 F.2d 573, 574 (9th

4   Cir. 1991) (civil rights action is proper method of challenging conditions of

5   confinement); Crawford v. Bell, 599 F.2d 890, 891-92 & n.1 (9th Cir. 1979)

6   (affirming dismissal of habeas petition on basis that challenges to terms and

7   conditions of confinement must be brought in civil rights complaint).

8   The clerk shall send petitioner a prisoner civil rights complaint form, enter

9   judgment in accordance with this order, terminate all pending motions as moot,

10   and close the file.

11   SO ORDERED.

12   DATED: July 2, 2010

     CHARLES R. BREYER
13   United States District Judge

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